

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 97-0561 ST**  
**Sales Tax**  
**For The Tax Periods: 1994, 1995, and 1996**

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**ISSUES**

I. **Sales Tax**: Assessment

**Authority:** IC 6-2.5-2-1; IC 6-2.5-4-1; IC 6-8.1-5-1; IC 6-8.1-5-4

Taxpayer protests the Department's assessment of sales tax on certain sales of motor vehicles.

II. **Negligence Penalty**: Imposition

**Authority:** IC 6-8.1-10-2.1; 45 IAC 15-11-2(c)

Taxpayer protests the imposition of the negligence penalty.

**STATEMENT OF FACTS**

Taxpayer sells used motor vehicles. Additional facts will be provided as needed.

I. **Sales Tax**: Assessment

**DISCUSSION**

Indiana imposes a sales tax, known as state gross retail tax, on retail transactions made in Indiana. IC 6-2.5-2-1. Retail transactions involve the transfer of tangible personal property. IC 6-2.5-4-1. The Department assessed sales tax on retail transactions. Taxpayer claims that certain transactions were not made by his business. According to audit, taxpayer sold several vehicles without collecting sales tax on the transaction. The Department issued notices of proposed assessment for this liability.

“The notice of proposed assessment is *prima facie evidence* that the department’s claim for unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” IC 6-8.1-5-1 (emphasis added). At hearing, taxpayer submitted documentation in an effort to show that he did not actually make certain sales upon which his sales tax liability is based. Taxpayer submitted a few ST-108 forms and claimed that certain motor vehicle sales were not attributable to his dealership.

Taxpayer is obliged to keep books and records so that the Department can determine his liability. IC 6-8.1-5-4. Taxpayer has not kept accurate records of his liability. Since the Department issued proposed assessments, taxpayer has routinely submitted checks for \$1500 along with a Claim for Refund. Taxpayer demonstrated at hearing that he keeps records in books. However, taxpayer did not submit documentation of every sale (via ST-108 form). Moreover, the auditor allowed credit in the original audit for the ST-108 forms that were submitted. Thus, the taxpayer did not prove that the assessment was in error and there is no basis for adjusting the assessment.

### **FINDING**

Taxpayer’s protest is denied.

## **II. Negligence Penalty: Imposition**

### **DISCUSSION**

Indiana Code 6-8.1-10-2.1(d) allows a penalty to be waived upon a showing that the failure to pay the deficiency was due to reasonable cause. Department regulation 45 IAC 15-11-2(c) requires that in order to establish reasonable cause, the taxpayers must show that they exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed. The Department finds that taxpayer has not sufficiently performed his duty to maintain accurate records. Thus, the penalty should not be waived.

### **FINDING**

The taxpayer’s protest is denied.